==

Order Below Application Exh.7 In
GPID C. C. No.02/2024

==

(1) This is a Discharge Application submitted by the accused applicant under the provision of Section 227 of the Code of Criminal Procedure, who is the accused in GPID CC No.02/2024 which is pending before this Court at the stage of submitting of list of documentary evidences. The present applicant has specifically averred that looking to the entire police papers submitted along with the charge sheet, there is no sufficient evidence against him to proceed with the matter and therefore, he may be ordered to be discharged.

(2) It appears that, all the accused persons hatched a criminal conspiracy by opening offices in first floor of Satyam Complex, Thakkar Bapa Chok, opp Fire Brigade, Dahod, in the name and style of Samrudh Jivan Foods Ltd. and Samrudh Jivan Multi State Multipurpose Co-op. Society and floated different schemes promising 16 percent return between 15.00 hours of 11/10/2011 to 10.00 hours of 24/12/16 and lured the present complainant and other 101 account holders belonging to Dahod Taluka and other Taluka to make investment in the above named organisation and thereafter, failed to return the amount with return as promised by them and thus the present applicant, who was a Director of the organisation has committed offence under Section 406, 409, 420, 114, 120(B) of the I. P. C. and Section 3 of Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003 and Section 4, 5 & 6 of Prize Chits and Money Circulation Scheme (Banning) Act 1978.

(3) I have heard the Learned Advocate Shri B. H. Dave for the applicant and Learned Additional P. P. Shri J. K. Chauhan for the State. The Ld. Advocate for the applicant has argued that the present applicant though was a director but he was paid Director so he cannot be fastened with the liability of a promoter. It is further submitted that there is not an iota of evidence that the present applicant lured the investors to make investment in their scheme floated by the organisation. It is further submitted that as per the prosecution case, the complainant came to know that the organisation has shut its door on 24/12/16 yet they did not file any complaint and upon his coming to know that other investors have filed complaint against the company, he went to Surat Court where Directors assured him that his money will be returned and thereafter the complaint came to be filed belatedly on 13/9/24, thus, there is delay of over five years, so the complaint is not maintainable considering Section 467 of Cr. P. C. He has further submitted that, Section 409 of I. P. C. is not applicable as the applicant is not a public servant and the company is not a banking company. He has further argued that Section 408 and Section 420 cannot exist together as if there is entrustment, there is no cheating and vice-a-versa, so offence cannot co-exist and each offence is mutually exclusive of each other. He has submitted that the statements of investors recorded by the I. O. are identical which suggests that the same are copy paste by the I.O. It is further submitted that the certificate of deposits does not bear his sign, so the applicant has not issued the certificate. So, the GPID Act is not applicable. He has submitted that it came to the knowledge of the complainant that, the company has shut operation in 2016 and came to know that cases are filed in the

Court in 2019, yet the complaint came to be filed in Year 2024, so, the complaint is beyond the period of limitation as prescribed by Section 468 of Cr. P. C. and thus, not maintainable.

(4) The learned Addl. P. P. Mr. J. K. Chauhan has vehemently argued that, this application for discharge is required to be rejected in view of the fact that there are prima facie evidences on record that the applicant was a director of the company and involved in luring investors to invest in the company, which is sufficient to frame charge against the present applicant.

(5) It is a settled law that, an order of discharge under Section 227 of the Cr. P. C. would be warranted only in those cases, where the Court is satisfied that there are no chances of conviction of an accused and the trial would be an exercise in futility. The Court has only to see whether *prima facie* there is sufficient ground for proceeding against accused. The Honourable Supreme Court has in the case of **Dilawar Babu V/s. State of Maharashtra : AIR 2002 SC 564** held that,

> *"In exercising jurisdiction under section 227 of the Code, the Judge can not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court* ***but should not make a roving enquiry in to the pros and cons of the matter and and weight the evidence as if he was conducting a trial.****"*

(6) The Honourable Supreme Court has in the case of **Supt. & Remembrancer Legal Affairs V/s. Anil Kumar : AIR 1980 SC**

52 in Para-18 held that, "**Strong suspicion about the commission of offence is sufficient for framing charges**."

(7) What should be the approach of the Court while dealing with Secs.227 and 228 of the Criminal Procedure Code in framing of charge against the accused or discharging is well explained by the Honourable Supreme Court in the matter of **State of M. P. V/s. S. B. Johari & Ors. : 2000 (2) SCC 57**. The Honourable Supreme Court observed in Para-4 as under :

> *"In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed.* ***It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed.*** *The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show*

> *that the accused committed the particular offence. In such case, there would be sufficient ground for proceeding with the trial."*

(8) In the case of **State of M. P. V/s. Mohanlal Soni : 2000 (6) SCC 338**, the Honourable Supreme Court referring to several previous decisions, has held at (SCC 342 Para 7) that the crystallised judicial review is that at the stage of framing charge, the Court has to *prima facie* consider as to whether there is sufficient ground for proceeding against the accused. **The Court is not required to appreciate evidence to conclude, whether the materials produced are sufficient or not for convicting the accused.**

(9) The Honourable Supreme Court has in the case of **Sanghi Brothers (Indore) Pvt. Ltd., V. Sanjay Chaudhry and Ors. : 2009 Cr. L. R. (SC) 6** in Para-6, 10 and 11 held as under :

> *"Strong suspicion about the commission of offense and the involvement of the accused is sufficient for framing charge. There is no necessity of formulating the opinion about conviction. Court has to see only whether the material brought on record could reasonably connect the accused with the trial."*

(10) Upon perusal of different Judgments of the Honourable Supreme Court, it appears that, at the stage of framing the charge, the trial Court should not marshal the materials on the record of the case as it would do on the conclusion of the trial. At the stage of framing the charge, inquiry must necessarily be limited to

deciding if the facts emerging from such materials constitute the offence, with which, the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof.

(11) Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out, if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(12) Upon perusal of record, it clearly appears as under;

The present applicant was a director of the organisation which floated various schemes to lure the investors to invest in their scheme and the gullible investors invested money in the schemes floated by the company which afterwards did not return the money along with the return promised by it. It has also come on record that the present applicant use to remain present in the meetings with the investor where their confidence was won and they were lured to invest money.

(13) Thus, in the case on hand, this Court is of the considered opinion that there is a *prima facie* strong case against the present applicant. At this stage, this Court has to appreciate and weight the materials on record for coming to the conclusion that charge against the applicant can be framed.

Therefore, this Court is of the considered opinion that the present application requires to be rejected. But, before passing final order, this Court would like to state that, the 2 decisions relied on by the applicant are not helpful to him for the following reasons.

(14) The first judgment of the Honourable Supreme Court rendered in case of **Delhi Race Club (1940) Limited And Ors. v. State of U.P.** reported in (2024) 10 SCC 690 which does not apply to the facts of the case on hand as in that case, the issue involved was purely civil whereas in the case on hand, it is not so. So the judgment does not help the applicant. The second judgment rendered between **State of Maharashtra v Laljit Rajshi Shah And Ors** reported in (2000) 2 SCC 699 wherein it is held that Chairman and members of Managing Committee of a cooperative society does not fall under the definition of Public Servant, is also not of any help to the applicant as in the case on hand the applicant being a director of Finance Company performing business akin to Non Banking Finance Company is liable for offence under Section 409 of I. P. C. though he may not qualify as public servant.

(15) Under the above narrated reasons, this Court is of the considered opinion that the present application of the applicant/accused is required to be dismissed and all the contentions raised by the applicant can be pressed in to service by him at the time of trial and the Court can decide all the contentions raised by the applicant after the conclusion of trial. Hence the following order ensues.

-: ORDER :-

The discharge application preferred by the applicant vide Ex-7 stands dismissed.

Order pronounced in the open Court on today the 17th Day of July, 2026.

Dt.17.07.2026 (Harishchandrasinh Gulabsinh Vaghela)
Place : Dahod Sessions Judge,
Dahod.
(Unique ID Code No.GJ00590)